

## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO)

## I.(a) PLAINTIFFS

Manuel Magana  
Mexican National

(3)  
3264  
B2

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF  
(EXCEPT IN U.S. PLAINTIFF CASES)

## (c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Martin James Martinez Cal state bar number 97713  
1434 Third Street: Suite 3 C Napa, CA 707-251-9383

## DEFENDANTS

Caryl Ann Cooper : NAPA

## COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES USE THE LOCATION OF THE  
TRACT OF LAND INVOLVED.

## ATTORNEYS (IF KNOWN)

## II. BASIS OF JURISDICTION (PLACE AN "✓" IN ONE BOX ONLY)

1 U.S. Government Plaintiff  
 2 U.S. Government Defendant  
 3 Federal Question (U.S. Government Not a Party)  
 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "✓" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

	PTF	DEF	PTF	DEF	
Citizen of This State	<input type="checkbox"/> 1	<input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input checked="" type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

## IV. ORIGIN

## (PLACE AN "✓" IN ONE BOX ONLY)

1 Original Proceeding  
 2 Removed from State Court  
 3 Remanded from Appellate Court  
 4 Reinstated or Reopened  
 5 Transferred from Another district (specify)  
 6 Multidistrict Litigation  
 7 Appeal to District Judge from Magistrate Judgment

## V. NATURE OF SUIT (PLACE AN "✓" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury Med Malpractice <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157
				<b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
				<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl.Ret. Inc. Security Act
				<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWV (405(g)) <input type="checkbox"/> 864 SSDI Title XVI <input type="checkbox"/> 865 RSI (405(g))
				<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (US Plaintiff or Defendant <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motion to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 565 Prison Condition		

## VI. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY) 28 USC 1332

VII. REQUESTED IN COMPLAINT:  CHECK IF THIS IS A CLASS ACTION  DEMAND \$  CHECK YES only if demanded in complaint:  
UNDER F.R.C.P. 23  YES  NO

## VIII. RELATED CASE(S) IF ANY PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)  SAN FRANCISCO/OAKLAND  SAN JOSE

DATE SIGNATURE OF ATTORNEY OF RECORD

JULY 3, 2003

1 MARTIN JAMES MARTINEZ  
 2 California State Bar Number: 97713

3 Martinez Law Office  
 4 1434 Third Street  
 5 Suite 3 C  
 6 Napa, CA 94559  
 7 Telephone: (707)251-9383  
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 9 Attymar@sbcglobal.net

10 Attorney for Plaintiff,  
 11 Manuel Alejandro Magana

FILED

JUL - 7 2008

RICHARD W. WIEKING  
 CLERK, U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

E-filing

BZ

12  
 13 UNITED STATES DISTRICT COURT FOR THE  
 14 NORTHERN DISTRICT OF CALIFORNIA

15 SAN FRANCISCO

16  
 17 MANUEL ALEJANDRO MAGANA

18 Plaintiff,

19 V.S.

20 CARYL ANN COOPER,

21 Defendant

CV 08 CASE NUMBER: 3264

22 COMPLAINT FOR DAMAGES IN EXCESS  
 23 OF \$75,000.00 BASED ON NEGLIGENCE/  
 24 SUBJECT MATTER JURISDICTION DUE  
 25 TO DIVERSITY OF CITIZENSHIP

26 **28 UNITED STATES CODE 1332**

27 Demand for Jury Trial

28 **Complaint for damages in excess of \$75,000.00**

29 Pursuant to the Federal Rules of Civil Procedure, and Local Court Rules, upon  
 30 information and belief, the plaintiff states as follows:

31 **Subject Matter Jurisdiction**

32 1. Pursuant to 28 United States Code 1332 (a) "The district courts shall have original  
 33 jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of  
 34 \$75,000, exclusive of interest and costs, and is between— (1) citizens of different States; (2)

35 **Complaint for Damages**

1 citizens of a State and citizens or subjects of a foreign state; (3) citizens of different States and in  
2 which citizens or subjects of a foreign state are additional parties; and (4) a foreign state, defined  
3 in section 1603 (a) of this title, as plaintiff and citizens of a State or of different States. For the  
4 purposes of this section, section 1335, and section 1441, an alien admitted to the United States  
5 for permanent residence shall be deemed a citizen of the State in which such alien is domiciled.”

6        2. In diversity cases the subject matter jurisdiction of the federal courts is defined by who  
7 the parties to the lawsuit are rather than the subject matter of the underlying dispute. Federal  
8 subject matter jurisdiction exists in cases where the opposing parties are citizens of different  
9 states and the amount in controversy exceeds \$75,000 exclusive of interests and costs.

10       3. That the instant case, the plaintiff, although he temporarily resides in Napa County, he  
11 is not a permanent resident of the United States of America. He is an alien from the Republic of  
12 Mexico, and as such, there is complete diversity between the parties, and there is a good faith  
13 belief that the claim is well in excess of \$75,000.00, exclusive of interests and costs.

### *Venue*

15       4. Under 28 U.S.C 1391, the court is proper because the cause of action took place in  
16 Napa County, a county within the venue of the Northern District of California.

## *Parties*

18       5. That the plaintiff, is an adult citizen and subject of a foreign country to wit: the  
19 republic of Mexico.

20       6. The defendant, a resident of Napa County, is an indispensable party subject to this  
21 suit.

22 7. Damages is an adequate remedy due to the fact the plaintiff was injured with damages  
23 well in excess of \$75,000.00, the statutory figure for diversity, due to the negligence of the  
24 defendant.

### Claim for Relief: Negligence

26 8. On January 18, 2008, at approximately 20:29 hours, in the County of Napa, State of  
27 California, on Freeway Drive, the plaintiff, riding southbound on his bicycle in his designated  
28 bike lane, saw the defendant stop at the stop sign. The plaintiff then continued southbound on

1 Freeway Drive.

2       9. The defendant, while in her motor vehicle, entered the intersection, and attempted a  
3 left turn into north bound Freeway Drive. While entering the intersection, the defendant  
4 broadsided the plaintiff. The defendant driver did not obey the stop sign. Due to this negligence,  
5 the plaintiff was severely injured.

6       10. The plaintiff was caused to fall off his bike and he landed about 27 feet east of the  
7 crosswalk marking. He sustained a broken left clavicle, multiple abrasions to his hands and  
8 feet, bumps on his head, and back pain. He was taken by ambulance to the Queen of the Valley  
9 Hospital in Napa.

10       11. The plaintiff alleges that the acts of the defendant were the legal and proximate cause  
11 of damages to the plaintiff. That the defendant owed a duty to use due care. This duty was  
12 breached, and the breach was the proximate or legal cause of the resulting injury.

13       12. That it was foreseeable that harm would be caused to the plaintiff and that the above  
14 negligence was the legal and proximate cause of his injury by causing him to injure himself. The  
15 defendant should have exercised caution for the protection and safety of the plaintiff. That this  
16 breach of duty was the proximate and legal cause of her injuries. That this negligence caused the  
17 plaintiff to suffer injury, damages, loss or harm.

18       13. That this failure to exercise due care is negligence *per se* pursuant to *California*  
19 *Evidence Code §669 (a)* because the failure of a person to exercise due care is presumed if:  
20 (1) The defendant violated a statute, ordinance, or regulation of a public entity;  
21 (2) The violation proximately caused death or injury to person or property;  
22 (3) The death or injury resulted from an occurrence of the nature which the statute, ordinance, or  
23 regulation was designed to prevent; and  
24 (4) The person suffering the death or the injury to his person or property was one of the class of  
25 persons for whose protection the statute, ordinance, or regulation was adopted.

26       14. The actual statutory language in question that the defendant violated is set forth in  
27 *California Vehicle Code §21801. (a)* "The driver of a vehicle intending to turn to the left or to  
28 complete a U-turn upon a highway, or to turn left into public or private property, or an alley, shall

1 yield the right-of-way to all vehicles approaching from the opposite direction which are close  
2 enough to constitute a hazard at any time during the turning movement, and shall continue to  
3 yield the right-of-way to the approaching vehicles until the left turn or U-turn can be made with  
4 reasonable safety.

5 (b) A driver having yielded as prescribed in subdivision (a), and having given a signal  
6 when and as required by this code, may turn left or complete a U-turn, and the drivers of vehicles  
7 approaching the intersection or the entrance to the property or alley from the opposite direction  
8 shall yield the right-of-way to the turning vehicle." [Added 1959 ch. 3; amended 1963 ch. 1844;  
9 1969 ch. 312; 1988 ch. 623; 1993 ch. 272, effective July 30, 1993.

10 15. That the defendant's vehicle was so close to the plaintiff as to constitute a hazard to  
11 him due to the fact a reasonable person in the position of the driver intending to turn left would  
12 realize that the motor vehicle and bicycle would probably collide at some time during the turning  
13 movement if the defendant did not yield the right of way.

14 16. That the defendant as a person using a public street, or highway , as a driver of a  
15 motor vehicle, had a duty to exercise ordinary care at all times to avoid placing the plaintiff in  
16 danger and to use like care to avoid an accident from which an injury might result. This duty was  
17 violated by the defendant when she collided with the plaintiff.

18 17. While it is the duty of both the plaintiff and defendant to use due care, that duty does  
19 not require the same amount of caution form each. A driver of a motor vehicle, is in charge of a  
20 machine capable of causing serious consequences if the driver is negligent,

21 **Prayer for Relief**

22 WHEREFORE, plaintiff prays for compensatory damages as follows:

23 18. General Damages in an amount of \$80,000.00.

24 19. Special Damages such as Medical, Hospital, doctor, nurse, lab, pharmaceutical,  
25 psychiatric, psychological, and incidental expenses in an amount of \$12,197.11 as follows:

26 a. Queen of the Valley Hospital in the amount of \$8,973.19.

27 b. Piner Ambulance Service in the amount of \$795.92

28 c. Napa Valley Emergency Medical Group: \$767.00

d. Dr. James Bishopberger:	\$1605.00
e. Community Health Clinic	\$56.00
f. Future Medical expenses	\$35,000.00

## 20. Loss of earnings and earnings capacity in an amount

to be proven at trial in the estimated sum of: \$25,000.00

21. Loss of Property \$500.00

## 21. Costs and interests to be determined at trial

22. Total amount of damages requested by plaintiff: \$152, 697.11

22. That pursuant to *Federal Rule of Civil Procedure 38(b)* and *Local Rule 3-6*, the

10 plaintiff respectfully demands a trial by jury of all issues so triable in this action.

23. That the court order all other relief deemed appropriate and such other and further

12 | relief as may be just and proper.

Dated: May 1, 2008

~~MARTIN JAMES MARTINEZ~~  
Attorney at Law

**Certification of Interested Entities or Persons**

Pursuant to Civil L.R. 3-16, the undersigned based on information and belief, hereby certifies that as of this date, other than the named parties, there is no such interest to report.

Dated: May 1, 2008

~~MARTIN JAMES MARTINEZ~~  
Attorney at Law